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9 **UNITED STATES DISTRICT COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA**

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13 **SECURITIES AND EXCHANGE**
14 **COMMISSION,**

15 **Plaintiff,**

16 **vs.**

17 **EL CAPITAN ADVISORS, INC.**
18 **AND ANDREW NASH,**

19 **Defendants.**
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Case No. 2:25-cv-05066

**CONSENT TO ENTRY OF FINAL
JUDGMENT BY DEFENDANT EL
CAPITAN ADVISORS, INC.**

1 1. Defendant El Capitan Advisors, Inc. (“Defendant”) waives service of a
2 summons and the complaint in this action, enters a general appearance, and admits
3 the Court’s jurisdiction over Defendant and over the subject matter of this action.

4 2. Without admitting or denying the allegations of the complaint (except as
5 to personal and subject matter jurisdiction, which Defendant admits), Defendant
6 hereby consents to the entry of the final judgment in the form attached hereto (the
7 “Final Judgment”) and incorporated by reference herein, which, among other things:

8 (a) permanently restrains and enjoins Defendant from violation of
9 Sections 206(1), 206(2), and 207 of the Investment Advisors Act
10 of 1940 (“Advisers Act”), 15 U.S.C. §§ 80b-6(1), 80b-6(2) and
11 80b-7; and

12 (b) orders Defendant to pay disgorgement of \$10,700,000.00, plus
13 prejudgment interest thereon in the amount of \$1,840,291.82.

14 3. Defendant agrees that it shall not seek or accept, directly or indirectly,
15 reimbursement or indemnification from any source, including but not limited to
16 payment made pursuant to any insurance policy, with regard to any civil penalty
17 amounts that Defendant pays pursuant to the Final Judgment, regardless of whether
18 such penalty amounts or any part thereof are added to a distribution fund or otherwise
19 used for the benefit of investors. Defendant further agrees that it shall not claim,
20 assert, or apply for a tax deduction or tax credit with regard to any federal, state, or
21 local tax for any penalty amounts that Defendant pays pursuant to the Final
22 Judgment, regardless of whether such penalty amounts or any part thereof are added
23 to a distribution fund or otherwise used for the benefit of investors.

24 4. Defendant waives the entry of findings of fact and conclusions of law
25 pursuant to Rule 52 of the Federal Rules of Civil Procedure.

26 5. Defendant waives the right, if any, to a jury trial and to appeal from the
27 entry of the Final Judgment.

28 6. Defendant enters into this Consent voluntarily and represents that no

1 threats, offers, promises, or inducements of any kind have been made by the
2 Commission or any member, officer, employee, agent, or representative of the
3 Commission to induce Defendant to enter into this Consent.

4 7. Defendant agrees that this Consent shall be incorporated into the Final
5 Judgment with the same force and effect as if fully set forth therein.

6 8. Defendant will not oppose the enforcement of the Final Judgment on the
7 ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of
8 Civil Procedure, and hereby waives any objection based thereon.

9 9. Defendant waives service of the Final Judgment and agrees that entry of
10 the Final Judgment by the Court and filing with the Clerk of the Court will constitute
11 notice to Defendant of its terms and conditions. Defendant further agrees to provide
12 counsel for the Commission, within thirty days after the Final Judgment is filed with
13 the Clerk of the Court, with an affidavit or declaration stating that Defendant has
14 received and read a copy of the Final Judgment.

15 10. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims
16 asserted against Defendant in this civil proceeding. Defendant acknowledges that no
17 promise or representation has been made by the Commission or any member, officer,
18 employee, agent, or representative of the Commission with regard to any criminal
19 liability that may have arisen or may arise from the facts underlying this action or
20 immunity from any such criminal liability. Defendant waives any claim of Double
21 Jeopardy based upon the settlement of this proceeding, including the imposition of
22 any remedy or civil penalty herein. Defendant further acknowledges that the Court's
23 entry of a permanent injunction may have collateral consequences under federal or
24 state law and the rules and regulations of self-regulatory organizations, licensing
25 boards, and other regulatory organizations. Such collateral consequences include, but
26 are not limited to, a statutory disqualification with respect to membership or
27 participation in, or association with a member of, a self-regulatory organization. This
28 statutory disqualification has consequences that are separate from any sanction

1 imposed in an administrative proceeding. In addition, in any disciplinary proceeding
2 before the Commission based on the entry of the injunction in this action, Defendant
3 understands that it shall not be permitted to contest the factual allegations of the
4 complaint in this action.

5 11. Defendant understands and agrees to comply with the terms of 17 C.F.R.
6 § 202.5(e), which provides in part that it is the Commission's policy "not to permit a
7 defendant or respondent to consent to a judgment or order that imposes a sanction
8 while denying the allegations in the complaint or order for proceedings," and "a
9 refusal to admit the allegations is equivalent to a denial, unless the defendant or
10 respondent states that he neither admits nor denies the allegations." As part of
11 Defendant's agreement to comply with the terms of Section 202.5(e), Defendant: (i)
12 will not take any action or make or permit to be made any public statement denying,
13 directly or indirectly, any allegation in the complaint or creating the impression that
14 the complaint is without factual basis; (ii) will not make or permit to be made any
15 public statement to the effect that Defendant does not admit the allegations of the
16 complaint, or that this Consent contains no admission of the allegations, without also
17 stating that Defendant does not deny the allegations; and (iii) upon the filing of this
18 Consent, Defendant hereby withdraws any papers filed in this action to the extent that
19 they deny any allegation in the complaint. If Defendant breaches this agreement, the
20 Commission may petition the Court to vacate the Final Judgment and restore this
21 action to its active docket. Nothing in this paragraph affects Defendant's: (i)
22 testimonial obligations; or (ii) right to take legal or factual positions in litigation or
23 other legal proceedings in which the Commission is not a party.

24 12. Defendant hereby waives any rights under the Equal Access to Justice
25 Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other
26 provision of law to seek from the United States, or any agency, or any official of the
27 United States acting in his or her official capacity, directly or indirectly,
28 reimbursement of attorney's fees or other fees, expenses, or costs expended by

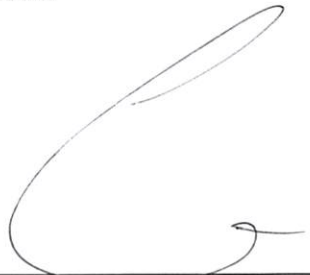
1 Defendant to defend against this action. For these purposes, Defendant agrees that
2 Defendant is not the prevailing party in this action since the parties have reached a
3 good faith settlement.

4 13. Defendant agrees to waive all objections, including but not limited to,
5 constitutional, timeliness, and procedural objections, to the administrative proceeding
6 that will be instituted when the judgment is entered.

7 14. Defendant agrees that the Commission may present the Final Judgment
8 to the Court for signature and entry without further notice.

9 15. Defendant agrees that this Court shall retain jurisdiction over this matter
10 for the purpose of enforcing the terms of the Final Judgment.

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13 Dated: December 10th, 2024

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15 
16 Andrew Nash in his capacity as the Chief
17 Executive Officer, founder and majority
18 owner of El Capitan Advisors, Inc.

19 On _____, 2024, Andrew Nash, a person known to me, personally
20 appeared before me and acknowledged executing the foregoing Consent with full
21 authority to do so on behalf of El Capitan Advisors, Inc. as its Chief Executive
22 Officer, founder and majority owner.

23 _____
24 Notary Public
25 Commission expires:
26
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CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

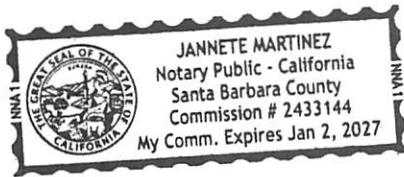
State of California

County of SANTA BARBARA }

On DECEMBER 10, 2024 before me, JANNETE MARTINEZ, NOTARY PUBLIC
 Date Here Insert Name and Title of the Officer

personally appeared ANDREW NASH
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]
 Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: CONSENT TO ENTRY OF FINAL JUDGMENT

Document Date: DECEMBER 10, 2024 Number of Pages: 6

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____